



Sent via email to: minister.mecp@ontario.ca

July 29, 2022

Honourable David Piccini
Minister of the Environment, Conservation and Parks
College Park 5th Floor
777 Bay St
Toronto, ON M7A 2J3

Dear Minister Piccini:

RE: Circular Economy Initiatives in the Made-in-Ontario Environment Plan

Congratulations on your appointment as Minister! We look forward to working with you to continue to advance the circular economy in Ontario.

I am writing to you on behalf of the Association of Municipalities of Ontario Waste Management Task Force to highlight several circular economy policy initiatives that municipal governments would like to see addressed.

We wanted to follow up on two outstanding Environmental Registry Proposals that we had additional comments on:

- [ERO # 019-0045: Administrative Penalties Regulation made under the *Resource Recovery and Circular Economy Act, 2016*](#)
- [ERO # 019-4656: Proposed amendments to the producer responsibility regulations for tires, batteries and electrical and electronic equipment made under the *Resource Recovery and Circular Economy Act, 2016*](#)

As well we wanted to follow-up on a few action items that are part of the [Made-In-Ontario Environment Plan](#):

- Guidance to educate the public and key stakeholders about reducing and diverting food and organic waste under the [Food and Organic Waste Policy Statement](#)
- Transition of the Blue Box to full producer responsibility
- The proposal to phase out food and organic waste from landfills by 2030 that will focus on building processing capacity in the province
- Work with partners to conduct audits to identify materials that could be recovered and recycled through new producer responsibility designations
- Modernize environmental approvals to support sustainable end markets for waste and new waste processing infrastructure.

Administrative Penalties Regulation (ERO # 019-0045)

As noted in our letter of November 3, 2021, municipal governments strongly support the passage of an administrative penalties regulation as part of the move to performance-based recycling regulations. Clear consequences for non-compliance will lead to better economic and environmental outcomes. It is important for this regulation to be passed quickly so this regulatory enforcement tool is available.

We do however want to note a few areas of concern:

- The current proposal refers to the incorrect part of the [O. Reg. 391/21](#) (i.e., it refers to Part IV instead of Part VI related to a failure to establish or operate a system for managing blue box material)
- Section 11 sets out that there are no penalties for “best efforts” provisions. This should be amended to state that penalties do apply if best efforts are not met. Best efforts should be based on producers taking, in good faith, all reasonable steps to meet the requirements of the regulation. Failure to comply with this standard should result in enforcement and penalties similar to other provisions and requirements.

Proposed amendments to the producer responsibility regulations for tires, batteries and electrical and electronic equipment (ERO # 019-4656)

Given the period of time that has passed between when this regulation was proposed, we believe that additional information has come forward that could be used to refine the proposal, including:

- Overarching
 - *Consumer fees* - Given the likely inclusion of more consumer fees (e.g., Ontario beverage producers considering levies in a similar manner to Manitoba), we remain concerned about the removal of consumer protection requirements like the reporting and audit requirements for visible fees under the Tire Regulation. We are concerned that improperly charged fees or those not exposed to market conditions could jeopardize policies as they have in the past.
 - *Frequency of management audits and internal verification process for supply data* - The need for producers to provide annual audited supply and management performance data is not red tape. It is a fundamental component of a proper oversight regime. Virtually all outcome/performance-based regulations (e.g., financial, environmental, health and safety, resource related) require annual reporting.

These requirements are necessary to ensure a level playing field and to ensure the outcomes sought in the regulation are achieved. They are also necessary to ensure that materials supplied into the market are properly managed at the end-of-life and that the rules strengthen ongoing investment into Ontario's economy and their associated returns.

We note concerns being raised already about performance particularly from the battery and electrical and electronic equipment that make this issue more pressing.

Further, whether an audit is completed annually or every three years (for each of those three years) would not substantially reduce the work needed to be undertaken. The process only makes it more difficult to locate dated information.

- *Producer Responsibility Organization (PRO) and producer shared liability* - This is a fundamental change to the intention of the original regulations and runs counter to the foundation of the *Act* that makes producers individually liable for compliance. PROs are simply contractors acting on behalf of producers. Producers have the ability to make them liable in the individual contracts they have with them. No justification has been provided for this change. It does not reduce administrative burden and compromises the tenets of the *Act*. These changes should be removed.
- Electrical and electronic equipment regulation
 - The latest [Resource Recovery Report](#) by the Resource Productivity and Recovery Authority (RPPRA) clearly highlights the issue with the current targets. The management targets for 2021 and 2022 are ~18,000 tonnes lower than what was collected through the Ontario Electronic Stewardship Plan in 2019. It is also our understanding that there is 500 less collection points in the province currently than what was operated under the Ontario Electronic Stewardship Plan. We would strongly advocate that the Province revert to initial targets set in the draft regulation which were set at 75% and subsequently 80%. In addition, the Province should remove the allowable management deductions set out in s.18(2) and the double counting associated with refurbishment in s. 17(1)3.
- Hazardous Special Products (HSP) regulation
 - There is a concern that a literal read of the definition of pressurized containers may lead to an interpretation that foam insulation containers are excluded. However, we do not believe this to be the government's intent.

Foam insulation cylinders were included in the previous Stewardship Ontario Municipal Hazardous or Special Waste (MHSW) program as they are provided in TC-39M non-refillable pressurized containers and are not explicitly excluded. A memo from Stewardship Ontario dated April 19, 2012 mentions foam insulation containers. They were collected as part of this program at the cost of the producer.

The Ministry of Environment, Conservation and Parks (MECP) was clear in their presentation in March of 2021 that it was proposing to “transition current MHSW Program materials”. Furthermore, the decision notice posted June 8, 2021 on the Environmental Registry stated that the regulation is “aligned with what is currently covered under the MHSW program” with the exception of “certain definitions, e.g., refillable propane containers, antifreeze, solvents, and paints and coatings, to ensure that only intended materials are regulated.”¹ Clarifying this definition in the regulation would be helpful.

- While performance data is not yet available, we remain concerned about the lack of performance targets for most of the designated materials in the Regulation.
- The new requirements being sought by producer responsibility organizations under the Blue Box regulation (i.e., Community Statements of Work) remove all hazardous or special waste packaging as it potentially impacts their ability to produce food grade post-consumer recycled (PCR) content from the processed commodities. This provides greater rationale to ensure more of these products are captured under the Hazardous and Special Products (HSP) regulation so that they can be properly managed. Pharmaceuticals, automotive additives and cleaners, automotive additives and cleaner containers, fuels, miscellaneous flammable materials, oxidizers, corrosives – acids, corrosives – caustics, fuels, reactive chemicals, and many pesticides (e.g., insect repellents, sanitizers, disinfectants and antimicrobial products, diatomaceous earth, pet products, ant traps, insecticidal soaps) are currently excluded. These products and their packaging should be included in this regulation. We note that many are included in HSP policies in other jurisdictions like Manitoba, Saskatchewan, and British Columbia.
- Producers of HSP were obligated to continue to service current collection sites for the first 15 months from July 1, 2021, and new collection requirements apply starting January 2023.

¹ Environmental Registry Ontario. Decision Summary: Proposed producer responsibility regulation for Hazardous and Special Products (HSP), June 8, 2021. Available at <https://ero.ontario.ca/notice/019-2836>.

As municipalities have not heard anything from Producers on setting up their own collection sites to meet their legislative requirements, it appears producers will continue to rely on the status quo municipally developed system. To date little interest has been shown to properly fund these sites, to improve conditions or to innovate. The lack of any targets and the incorporation of new material is problematic. There is an opportunity for enhancement of regulatory requirements through more aggressive and better-defined diversion targets, as well as adding another phase to the regulation that designates the remainder of the materials that are collected at municipal hazardous depots.

Blue Box Transition

Our understanding is that the Ministry was proposing to update the Transition Schedule to include municipalities that were not captured in the initial iteration but have a Blue Box program in place (e.g., Township of Madoc, South River) and to add First Nations communities.

It would also be helpful to get an update on the Schedule to ensure that all Ontario communities that have Blue Box programs in place pre-2020 are accounted for. We note that a number of municipalities (e.g. South River, Black River-Matheson, Huron East-Brussels/Tuckersmith, Kapuskasing Moonbeam Management Board, Moose Deer Point, Northeast Recycling, Rainy River, and the Sault North Waste Management Council) did not report into the Datacall annually given their size and available resources, but did operate a Blue Box program.

Additionally, municipal governments are concerned about being considered producers under the Blue Box regulation. While we acknowledge that communities produce paper, the quantities represent a fraction of the overall paper and packaging generated in the system. This will be another administrative burden for communities. We recommend that you exempt governments from the definition of producer.

Organic Waste

As part of AMO's Climate Change Series, a discussion paper was [posted](#) late last year on Recommendations for the Diversion of Food and Organic Waste in Ontario. These recommendations include four key actions that are discussed in further detail in the paper:

1. Develop and implement a coordinated provincial plan to address food loss and waste, including:
 - a. An awareness/public education campaign to drive sustained consumer behaviour change in all sectors to avoid and reduce food loss and waste.
 - b. Working with retailers to develop and promote "smart shopping" offerings and merchandising in grocery/food stores to support consumer behaviour

change (e.g., smaller size offerings, information on best before dates, uses for left over foods).

- c. Promoting and participating in reallocation of surplus food by supporting food rescue organizations through food donation provisions in government catering contracts including food waste reduction measures.
2. Implement an organic waste disposal ban for Ontario, including:
 - a. Progressive source separation requirements for Ontario businesses, institutions, and commercial entities starting with the largest organizations.
 - b. Mechanisms to help maintain and expand current infrastructure, develop new infrastructure, and incent better environmental and economic outcomes.
 - c. Provide enough time to allow for proper planning and consultation.
 - d. Phase-in of smaller generators and exemptions for unique environments.
 - e. Reporting requirements for all organic waste processing facilities.
 - f. Ensuring proper oversight and enforcement mechanisms.
 3. Establish an escalating landfill levy for all waste being sent to disposal in Ontario or being exported outside Ontario to address the true cost of waste, climate change and greenhouse gas reduction and to create incentives for reduction or diversion activities. Funds raised from this levy should be allocated to municipal governments through a joint fund established to reduce waste, increase waste diversion, offset costs related to municipal operations (e.g., diversion at municipally operated buildings, administrative costs associated with the ban and levy), and promote other activities that reduce greenhouse gas emissions.
 4. Address issues related to compostable products and packaging by:
 - a. Finalizing the Blue Box Regulation under the *Resource Recovery and Circular Economy Act* (RRCEA) and include reporting, collection and management targets, and enforcement for compostable materials.
 - b. Enforce labelling requirements to ensure only products and packaging that can be proven to compost at scale and in practice without contaminating end products are labelled or marketed as compostable.
 - c. Researching the efficacy of compostable materials in existing organics processing facilities (e.g., compost and anaerobic digestion) and make recommendations on how producers of these materials should best manage them at end-of-life.

We believe the recommendations we have provided will be helpful as the government considers next steps on a food and organic waste ban. We look forward to working with you on this issue and would be pleased to speak with you about the work we have undertaken. We also hope that you might be able to share the following information:

- Results from the project completed by the MECP and ECCC on [compostable products and packaging pilot testing](#).
- Guidance materials with details and examples for stakeholders regarding the [Food and Organic Waste Policy Statement](#) such as:
 - How targets will be calculated and measured;
 - The baseline system calculator that has been discussed by the Ministry in the past;
 - Best practice guidance material for multi-residential buildings;
 - Further clarification on which businesses and entities are obligated to meet targets; and,
 - Data and record-keeping expectations.

These requirements begin in 2023 and municipal governments have been asking for this guidance for several years.

New Designations under the RRCEA

Consistent with the Made-In-Ontario Environment Plan, municipal governments have been exploring what materials might make sense to designate under the *Resource Recovery and Circular Economy Act* based on several environmental and economic factors. We hope to release in a draft Discussion Paper in the next few weeks that can hopefully assist the government with a constructive dialogue in this area.

Modernize Environmental Approvals

In order to realize the ambitious outcomes envisioned in the Made-in-Ontario Environment Plan it will be pivotal for the government to move quickly to remove some of the current barriers to ensure new waste diversion and disposal capacity can be developed to accommodate increasing volumes of material. Municipal governments support streamlining the approvals process and reviewing existing requirements. We are aware of several examples where process improvements or new infrastructure plans have been abandoned due to these barriers. Municipalities are prepared to meet quickly with the government and other stakeholders to explore options to reduce approval timelines for new facilities or changes to current approvals.

It is important to emphasize this is not about reducing the level of environmental protection involved in obtaining approvals for facilities. These facilities may pose potential environmental risks so they should have appropriate controls in place. Instead, this is about ensuring organizations seeking an approval for a change, an expansion or a new facility have greater certainty on project timelines and costs, as well as, maximizing built assets. Under Ontario's Place to Grow Plan, municipalities need certainty on timelines to accommodate growth.

We look forward to our continued work together on these issues. Please contact us at your earliest convenience to discuss any questions or concerns that you might have.

Sincerely,

DocuSigned by:

03DA508D46754E2...

Hilda MacDonald, Mayor, Municipality of Leamington
Chair, AMO Waste Management Task Force